Order of District Court

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

CIVIL ACTION NO. 3003-63

BIRDIE MAE DAVIS, ET AL.,

Plaintiff,

and

UNITED STATES OF AMERICA, by RAMSEY CLARK, Attorney General, etc.,

Plaintiff-Intervenor,

vs.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL.,

Defendants,

and

TWILA FRAZIER, ET AL.,

Intervenors.

This Court entered a decree in this case on August 1, 1969, under which the public school system of Mobile County opened and operated through the first semester of 1969. That part of the desegregation plan devised in said order which was to be implemented in September 1970, was in accord with recommendations of Health, Education and

Welfare, with alterations or modifications to meet particular educational principles. This Court's decision was appealed and was affirmed by the Fifth Circuit Court of Appeals sitting en banc on December 1, 1969.

On January 14, 1970, the Supreme Court of the United States reversed the Fifth Circuit Court of Appeals and remanded the decision to the Court of Appeals for further proceedings consistent with the Supreme Court's opinion. On January 21, 1970, the Court of Appeals issued its mandate to this Court, which in effect stated that there could be no deferral of school desegregation beyond February 1, 1970.

Faced with this mammoth task, the Court on its own motion sought the advice and professional assistance of all the parties. On the afternoon of January 23, 1970, the Court conducted a pretrial conference with the attorneys representing all of the parties and at such time the Court requested attorneys for the school board and the government to submit a revision of the plans submitted by the school board on December 1, 1969. The Court realizing its plan of August 1, 1969, in some respects was still a dual system, ordered the school board to submit a plan not later than December 1, 1969, which would disestablish such system, which plan was to be implemented on September 1, 1970. The Court also called upon the government for revision of the HEW plan which the government thought should be followed for the remainder of the present school year. These revised plans were to be furnished to the Court by 9 o'clock A.M. on the 27th day of January. The government furnished the requested plans. The school board did not, and by order dated January 28, 1970, at 9:30 A.M., the school board was ordered to submit such revised plans. As of this date, they have not done so. The school

board and its staff of administrators and professional educators, who know the Mobile Public School System best, who have all the facts and figures which are absolutely necessary for a meaningful plan, have not assisted or aided the Court voluntarily. Consequently, the plan which is by this decree being ordered is not perfect, but the ten day period from January 21st to February 1st obviously allows inadequate time to work out an ideally legal and workable plan for educating approximately 75,000 school children, particularly when the change comes in mid-semester. This plan pleases no one—the parents and students, the school board, Justice Department, NAACP, nor in fact, this Court. The Court's plan closes schools which the school board wants open. It opens schools which the Justice Department wants closed. But a decision had to be made and it was the duty and the responsibility of this Court to make that decision. The Supreme Court of this country has spoken, and this Court is bound by its mandate. It is the law. It must be followed.

The revised HEW plan which the government submitted to the Court would require no busing of students, but extensive pairing of several schools. An alternate plan submitted by HEW and upon which the plaintiffs insist, would require the busing of children from areas of the city to a different and unfamiliar area as well as the pairing of many schools. The distance between some of the schools by vehicular traffic would be approximately fifteen miles. The government plan and the HEW plan would materially change the grade structure for approximately thirty-four schools, and in some instances, would completely change each school's identity. The government asked the Court to close many of the high schools which are attended by 90% or more of Negro pupils, among them, Central High

and Mobile Training. This I am unwilling to do as I think it would be unfair to the Negro population of this city. Many of them have graduated from one or more of these schools. They take pride in them. In many areas, including sports, there is much rivalry between these schools and I do not think the traditions which they have created over the years should be destroyed.

Under one of the HEW plans it would have necessitated a child in the Austin area to attend Austin in the fifth grade and from the sixth through ninth grades he would have to change three times, namely, to Phillips, Washington and Toulminville, and in the tenth grade to Murphy, thus attending five different schools in six years. Under one of the HEW plans of pairing schools, a child would have gone to Dodge in the first and second grades, Williams in the third grade, and Owens in the fourth, fifth and sixth grades. The distance from Dodge to Williams is approximately 8.6 miles and from Williams to Owens approximately 7.4 miles and from Dodge to Owens, approximately 11.4 miles.

Admittedly these material changes in grade structures and in identity, and the pairing of schools and the necessity of busing great distances, are motivated for the sole purpose of achieving racial balance. In this Court's opinion, the Supreme Court has not held that such drastic techniques are mandatory for the sole purpose of achieving racial balance. By the same token, the Court is of the opinion that such techniques in certain instances, must be utilized to remove the effect of the dual school system. Therefore, it was necessary to change the grade structure on a limited basis and in one instance, the identity of a school. These alterations were not motivated to achieve racial balance, but to desegregate the public school system.

I have said many times that the best thing that could happen would be for this litigation to come to an end. This is true. But I am unwilling to disregard all common sense and all thoughts of sound education, simply to achieve racial balance in all schools. I do not believe the law requires it. And this litigation will continue to be stirred as long as adequate funds are provided for those who want litigation, for the sake of litigation, without regard to the rights of the children and parents involved.

The Court has attempted as nearly as possible to comply with the mandate of the Appellate Courts and yet leave it humanly and educationally possible to operate the schools. Laboring under the handicap of time, the Court has accomplished what it finds to be the plan most workable under the circumstances, both from an educational and implemental point of view.

Therefore, it is ORDERED, ADJUDGED and DECREED by the Court that the area attendance desegregation plan submitted by the school board on December 1, 1969, for those school zones lying East of I-65, with one exception set out below, is hereby adopted and put into effect as of February 1, 1970, with the following exceptions:

Elementary Schools East of I-65

1. The Emerson Elementary School serving Grades 1-6 shall be closed. Those students who attend Emerson will now attend Council or Leinkauf Elementary Schools, as illustraetd by the map attached hereto and identified as Exhibit "A". Those sixth grade students now attending Emerson shall be enrolled at Hall Junior High School. The placement of the Emerson students in other area attendance zones are reflected by modification of the Council-Leinkauf area attendance zones.

Middle Schools East of I-65

2. The Hall area attendance zone shall be increased to relieve the overcrowding situation at Dunbar Junior High and to include those sixth grade students who previously attended Emerson or Old Shell Road. The area attendance zones for Washington Junior High, Phillips Junior High, Mae Eanes Junior High, and Dunbar Junior High, have all been altered to achieve a desegregated school system, as reflected by area attendance zone map attached hereto and identified as Exhibit "B".

High Schools East of I-65

3. Trinity Gardens School is hereby changed to a middle school serving Grades 6-8. The high school students who previously attended Trinity Gardens shall attend Blount High School.

Murphy High School area attendance zone has been increased to achieve desegregated school system and to eliminat the overcrowded enrollment at Toulminville High School, as reflected by area attendance zone map attached hereto and identified as Exhibit "C".

It is FURTHER ORDERED, ADJUDGED and DECREED by the Court that those graduating high school seniors who are not presently attending the high school which serves their area under the Court's plan submitted this date, shall be allowed to remain in the high school which they presently attend for the remainder of the 1969-70 school year.

However, since the identity of the Trinity Gardens school has been changed from a high school to a school serving the middle grades, the seniors at Trinity Gardens shall now be attending Blount High School. Under the circumstances, the Court authorizes the Board, faculty, and the students themselves, in instituting this plan, to maintain the identity

of the Trinity Gardens seniors as a unit by whatever proper programs they deem necessary at Blount High School.

Schools Lying West of I-65

4. The Davidson High School attendance area is hereby enlarged to include those students who previously attended Murphy High School under the area attendance zone lying West of I-65 as illustrated by Exhibit "C" attached hereto.

It is FURTHER ORDERED, ADJUDGED and DECREED that the area attendance zones lying West of I-65 as decreed by this Court on August 1, 1969, with the one exception above noted, shall remain in effect.

Paragraph VII of the Court's order of August 1, 1969, pertaining to faculty is incorporated in its entirety in this order and should be implemented forthwith.

The Board shall publish or cause to have published in the local newspaper, the complete text of this decree and the maps attached, not later than Wednesday, February 4, 1970. In addition, the school board shall post or cause to be posted, in a conspicuous place in each school in the system in which this decree changes area attendance zones from that established in the August 1, 1969, decree, and at the offices of the school board.

The Court finds that this decree disestablishes the operation of a dual school system in Mobile County and establishes a unitary system.

This plan shall be implemented forthwith.

DONE at Mobile, Alabama, this the 31st day of January 1970.

/s/ DANIEL H. THOMAS
United States District Judge

Opinion of Court of Appeals

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 29332
Summary

BIRDIE MAE DAVIS, ET AL.,
Plaintiffs-Appellants-Cross Appellees,

and

UNITED STATES OF AMERICA, ETC.,
Plaintiff-Intervenor-Appellants-Cross Appellees,

versus

BOARD OF SCHOOL COMMISSIONERS OF
MOBILE COUNTY, ET AL.,
Defendants-Appellees-Cross Appellants,

and

TWILA FRAZIER, ET AL.,
Intervenors-Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA

(June 8, 1970)

Before BELL, AINSWORTH, and GODBOLD, Circuit Judges.

Opinion of Court of Appeals

BELL, Circuit Judge: We consider again the effort to convert the Mobile County School System from dual to unitary status. This is the ninth appeal of the matter to this court.[1] The system is now operating on a student assignment system fashioned by the district court after considering a school board plan of assignment, three separate HEW plans, and one plan submitted by the Department of Justice.

In *Singleton* v. *Jackson Municipal Separate School District,* supra, fn. (1), we approved the student assignment plan of the Mobile County system then in effect for all schools located west of Interstate Highway 65. This appeal basically complains only of the student assignments in the schools located east of I-65. However, in an effort finally to adjudicate the status of this system from the standpoint of all of the essentials required to convert a dual school system into a unitary school system, we have obtained supplemental findings of fact from the district court. See *Ellis* v. *The Board of Public Instruction of Orange County, Florida,* 5 Cir., 1970, —— F.2d —— [No. 29,124, slip opinion dated February 17, 1970]; *Mannings* v. *The Board of Public Instruction of Hillsborough County, Florida,* 5 Cir., —— F.2d —— [No. 28,643, slip opinion dated May —, 1970], as examples of the same approach.

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[1] *Singleton* v. *Jackson Municipal Separate School District,* 5 Cir., 1969, 419 F.2d 1211 (en banc consideration of Mobile case and 12 additional school desegregation cases); *Davis* v. *Board of School Commissioners of Mobile County, Ala.,* 5 Cir., 1969, 414 F.2d 609; *Davis* v. *Board of School Commissioners of Mobile County, Ala.,* 5 Cir., 1968, 393 F.2d 690; *Davis* v. *Board of School Commissioners of Mobile County, Ala.,* 5 Cir., 1966, 364 F.2d 896; *Davis* v. *Board of School Commissioners of Mobile County, Ala.,* 5 Cir., 1964, 333 F.2d 53; *Davis* v. *Board of School Commissioners of Mobile County, Ala.,* 5 Cir., 1963, 322 F.2d 356; *Davis* v. *Board of School Commissioners of Mobile County, Ala.,* 5 Cir., 1963, 318 F.2d 63; *Davis* v. *Board of School Commissioners of Mobile County, Ala.,* 5 Cir., 1970, 422 F.2d 1139.

In *Ellis* v. *Orange County* and in *Mannings* v. *Hillsborough County*, we adverted to the school desegregation requirements set out in *Alexander* v. *Holmes County Board of Education*, 1969, 396 U.S. 19, 90 S.Ct. 29, 24 L.E.2d 19; *Green* v. *County School Board of New Kent County*, 1968, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716, and the decision of this court in *Singleton* v. *Jackson Municipal Separate School District*, supra. In *Ellis* v. *Orange County*, we said:

> "... In *Green* v. *County School Board of New Kent County*, ... the mechanics of what must be done to bring about a unitary system were outlined. They were stated in terms of eliminating the racial identification of the schools in a dual system in six particulars: composition of student bodies, faculty, staff, transportation, extracurricular activities, and facilities.... It was such dual systems, organized and operated by the states acting through local school boards and school officials, which were held unconstitutional in *Brown* v. *Board of Education*, 1954, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (Brown I), and which were ordered abolished in *Brown* v. *Board of Education*, 1955, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (Brown II).
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> "In *Green* the court spoke in terms of the whole system—of converting to a unitary, nonracial school system from a dual system. Then, in *Alexander* v. *Holmes County Board of Education*, ... the court pointed to the end to be achieved. The result, if a constitutionally acceptable system may be said to exist, must be that the school system no longer operates as a dual system based on race or color but as a 'unitary school ... [system] within which no person is to be

effectively excluded from any school because of race or color.' . . ." —— F.2d at p. ——.

We thus proceed to a determination of the status of the Mobile system with respect to each of the six essential elements which go to disestablish a dual school system.[2] We find the system deficient in student assignment in certain schools and also in faculty and staff assignment.

The Mobile system covers the whole of Mobile County including the City of Mobile. The county is quite large in area, embracing 1,222 square miles. There are a total of 96 schools in the system in 91 buildings, and the 96 schools consist of senior high, junior high, and elementary schools plus one special school. Some of the buildings house separate elementary or junior high or high schools; others house combinations of these. There were 73,504 students in the system as of September 26, 1969. This total breaks down into 42,620 or 58 percent white students, 30,884 or 42 per cent Negro students. Under the present plan 18,623 or 60 per cent of the Negro students in the system are assigned to schools having all or virtually all Negro student bodies. These Negro students are housed in 12 elementary, 3 junior high schools, 1 combination junior-senior high, and 3 senior high schools.

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[2] Under the stringent requirements of *Alexander* v. *Holmes County Board of Education*, supra, which this court has carried out in *United States* v. *Hinds County School Board*, 5 Cir., 1969, 417 F.2d 852 [Nos. 28030, 28042, Nov. 7, 1969], this court has judicially determined that the ordinary procedures for appellate review in school segregation cases have to be suitably adapted to assure that each system, whose case is before us, "begin immediately to operate as unitary school systems." Upon consideration of the record, the court has proceeded to dispose of this case as an extraordinary matter. Rule 2, FRAP.

FACULTY AND STAFF

The faculty and staff desegregation standard enunciated in *Singleton* v. *Jackson*, supra, requires assignment on a basis whereunder the ratio of Negro to white teachers and staff members in each school is substantially the same as each such ratio is to teachers and staff in the entire school system. The faculty ratio for the system is approximately 60 per cent white and 40 per cent Negro. As of April 7, 1970, there were 1,642 white faculty members and 1,098 Negro members or a total of 2,740. We have no information on staff ratios.

The Mobile County school system has almost totally failed to comply with the faculty ratio requirement although ordered to do so by the district court on August 1, 1969. Only a few schools approach the 60-40 faculty ratio. The district court is directed to require strict compliance with the *Singleton* v. *Jackson* rule for faculty and staff on or before July 1, 1970.

TRANSPORTATION, FACILITIES AND EXTRACURRICULAR ACTIVITIES

In the 1967-68 school term, 207 school buses transported 22,094 students daily. The facts disclose that school buses are used in all rural areas of the county and in the outlying areas of metropolitan Mobile and that they are operated on a non-segregated, non-discriminatory basis. The facts also demonstrate that all extracurricular activities and facilities are operated on the same basis. Indeed, there is no complaint regarding transportation, facilities and extracurricular activities. The district court is directed to enter an order requiring the continued desegregation of facilities and extracurricular activities and to include the requirements of *Singleton* v. *Jackson*, supra, as to trans-

portation, school construction and school site selection as a part of the order.

STUDENT ASSIGNMENT

We have examined each of the plans presented to the district court in an effort to determine which would go further toward eliminating all Negro or virtually all Negro student body schools while at the same time maintaining the neighborhood school concept of the school system. Unlike Orange County (*Ellis* v. *Orange County*, supra), Mobile does not purport to use the strict neighborhood assignment system. It employs zones based on discretionary zone lines. In that sense it is like the Hillsborough County system (*Mannings* v. *Hillsborough County*, supra), and the situation, as in Hillsborough, can be greatly improved by pairing some schools located in close proximity to each other. See the description of neighborhood pairing used in *Mannings* v. *Hillsborough County*. The situation can also be improved by recasting the grade structure in some of the buildings but, at the same time, maintaining the neighborhood school concept.

The plan submitted by the Department of Justice on January 27, 1970, contemplates both pairing and the recasting of grades. It produces a result of 9 all or virtually all Negro student body elementary schools instead of 12 as at present, and 1 senior high school of the same type instead of 7 junior and senior high schools as at present. Instead of 60 per cent of the Negro students being assigned to such schools, the result under the Department of Justice plan would be 28 per cent (8,515 students instead of 18,623). Every Negro child would attend an integrated school at some time during his education career under the Department of Justice plan.

The result to be achieved under this plan proves an obvious fact. Ordinarily, it is easier to desegregate high and junior high schools than elementary schools. This is due to the difference in the size of the schools. Elementary schools are generally smaller and thus they receive students from a more restricted area. On the other hand, high and junior high schools, with their large student capacities, encompass larger areas and, more likely, areas containing diverse racial groups.

We conclude that the Department of Justice plan, as hereinafter modified, must be invoked. By way of modification, it will be necessary to desegregate the one all Negro high school—Toulminville. It appears from maps of record that the zone line between Murphy high and Toulminville high can be redrawn so as to include some of the students living in the area of the Crichton elementary school. Some of these students appear to reside nearer Toulminville than Murphy. In addition, the Department of Justice plan must be modified to close the Emerson elementary school (soon to be eliminated in an urban renewal project). This school would have an all Negro student body under the Justice Department plan. The 450 students who would be assigned to Emerson are to be assigned as follows: 200 to Council, 200 to Caldwell, and 50 to Lienkauf.

This will leave only 8 all Negro student body schools (all elementary), with 25 per cent of the Negro students assigned thereto (7,725 instead of 18,623), and every Negro child in the Mobile system will attend school in a desegregated junior high and high school on a neighborhood basis.[3]

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[3] The Department of Justice plan coupled with the Toulminville and Emerson feature seems superior to the HEW plans. Any one of the plans, HEW or Department of Justice as modified, would lead to a unitary system. The original HEW plan (Plan B), filed

Attached as Appendix A is a chart depicting student body composition by school and race under the present district court plan and the Department of Justice plan of January 27, 1970.[4] The district court is directed to implement the Department of Justice plan on or before July 1, 1970 together with the Toulminville-Murphy and Emerson changes above described.

From the standpoint of demography, a majority of the Negro population in the Mobile school system is situated in a concentrated area within the City of Mobile to the east of Highway I-65. The all Negro student body schools which will be left after the implementation of the Department of

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on July 10, 1969, principally utilized zoning, but also proposed transporting approximately 2,000 Negro students from the heavy Negro concentration in eastern Mobile to predominantly white schools in the western and southern part of Mobile. It did not contemplate transporting white students in exchange. This plan would retain 6 all Negro schools serving 5,949 Negro students, or 19 per cent of the total Negro students in the system. HEW Plan B-alternative, filed December 1, 1969, employed contiguous zoning as well as contiguous pairing. The plan contemplated no transportation of students. It would leave 9 all Negro schools serving 7,971 students, or 26 per cent of the total. HEW Plan B-1-alternative, filed December 1, 1969, was limited to elementary schools and incorporated Plan B-alternative for junior and senior high schools. The plan involves non-contiguous pairing of each all Negro school in eastern Mobile with a predominantly white school in western or southern Mobile (across the system). The plan calls for cross-transportation of both whites and Negroes. There would be no all Negro schools under this plan. This non-neighborhood plan is euphemistically referred to in plaintiff's brief as a "Shared Neighborhood Plan."

[4] The defendants warn that the figures used by the Department of Justice and HEW are inaccurate. This may be true but the defendants, the only parties in possession of current and accurate information, have offered no help. This lack of cooperation and generally unsatisfactory condition, created by defendants, should be terminated at once by the district. Such errors in information as do exist may be corrected and the situation adjusted accordingly by the district court.

Justice plan as modified, are the result of neighborhood patterns. This condition can be further alleviated through a majority to minority transfer policy and through the functioning of a bi-racial committee. The student assignments in the school system depend on zone lines which are drawn on a discretionary basis and therefore may be subject, in some instances, to abuse and in others, to improvement. The proper administration of zone lines depends upon good faith in establishing and maintaining the lines as well as continuing supervision over them.

The district court is directed to see that a bi-racial committee of the type described in *Ellis* v. *Orange County*, supra, is established. See *Singleton* v. *Jackson Municipal Separate School District*, 5 Cir., 1970, —— F.2d —— [No. 29226, slip opinion dated May, 1970]. In addition, the district court is directed to require the majority to minority transfer rule of *Ellis* v. *Orange County*. All transferring students must be given transportation if they desire it and the transferee is to be given priority for space.

The district judge is also directed to require that the bi-racial committee serve in an advisory capacity to the school board in the areas of the operation of the majority to minority transfer rule, the promulgation and maintenance of zone lines, and in school site location. As we said in *Ellis* v. *Orange County*, with respect to eliminating all Negro student body schools:

> ". . . The majority to minority transfer provision under the leadership of the bi-racial committee is a tool to alleviate these conditions now. Site location, also under the guidance of the bi-racial committee, will guarantee elimination in the future. In addition, open housing, Title VIII, Civil Rights Act of 1968, 42 USCA, § 3601, et seq., *Jones* v. *Mayer*, 1968, 392 U.S. 409, 88

S.Ct. 2186, 20 L.Ed.2d 1189, will serve to prevent neighborhood entrapment."

DEFICIENCIES TO BE REMEDIED

We conclude that three of the six elements that go to make up a unitary system have been accomplished in Mobile County: transportation, extracurricular activities, and facilities. The remaining deficiencies in faculty and staff desegregation and in student assignment must be remedied on or before July 1, 1970 on the basis heretofore stated. All other diretion herein given to the district court must also be accomplished not later than July 1, 1970.

Once done, and when the district court, by the standards herein stated, has made its own conclusion as to the system being unitary, the district court must retain jurisdiction for a reasonable time to insure that the system is operated in a constitutional manner. As the Supreme Court said in *Green*, "... whatever plan is adopted will require evaluation in practice, and the court should retain jurisdiction until it is clear that the state-imposed segregation has been completely removed." 391 U.S. at 439.

REVERSED and REMANDED with direction.

APPENDIX "A"

COMPARISON OF DEPARTMENT OF JUSTICE PLAN WITH DISTRICT COURT PLAN

	Projected Enrollment Under Zone Lines Offered by the U. S. on 1/27/70			*Assignments Under District Court Plan of 1/31/70*		
ELEMENTARY SCHOOLS						
SCHOOL	*GRADES*	*WHITE*	*NEGRO*	*GRADES*	*WHITE*	*NEGRO*
South Brookley	1-6	502	71	1-6	484	76
Morningside	1-5	631	0	1-5	751	0
Williams	1-6	571	43	1-6	554	60
Maryvale	1-5	414	117	1-5	453	171
Mertz	1-5	498	104	1-5	453	0
Craighead	1-5	347	489	1-5	290	569
Arlington	1-5	160	170		- closed -	
Council	1-5	4	391	1-5	2	548
*Emerson	1-5	0	450		- closed -	
Lienkauf	1-5	273	165	1-5	224	235
Woodcock	1-5	424	167	1-5	193	186

		Projected Enrollment Under Zone Lines Offered by the U. S. on 1/27/70			*Assignments Under District Court Plan of 1/31/70*	
ELEMENTARY SCHOOLS — cont.						
SCHOOL	*GRADES*	*WHITE*	*NEGRO*	*GRADES*	*WHITE*	*NEGRO*
Westlawn	1-5	532	0	1-6	541	0
Crichton	1-5	438	348	1-6	457	240
Old Shell Road	1-5	232	295	1-6	267	106
Caldwell	1-5	0	350	1-6	20	390
Howard		- closed -		1-6	12	432
Owens	1-5	2	1414	1-6	0	1121
Fonvielle	1-5	0	1000	1-6	4	1163
Stanton Road	1-5	6	900	1-6	6	976
Gorgas	1-5	7	963	1-6	4	1168
Brazier	1-5	10	1022	1-5	0	955
Grant	1-5	15	1285	1-5	0	1231
Palmer/Glendale	1-5	434	931	1-5	66	600
Glendale/Palmer	1-5	434	931	1-5	385	192
Whitley	1-5	216	481	1-5	0	383
Robbins/Hamilton	1-5	638	855	1-5	0	859

	Projected Enrollment Under Zone Lines Offered by the U. S. on 1/27/70			Assignments Under District Court Plan of 1/31/70		
ELEMENTARY SCHOOLS — cont.						
SCHOOL	*GRADES*	*WHITE*	*NEGRO*	*GRADES*	*WHITE*	*NEGRO*
Hamilton/Robbins	1-5	638	855	1-6	62[illegible]	0
Chickasaw	1-5	473	100	1-6		3
WEST OF I-65						
Whistler	1-5	181	205	1-6	[illegible]27	231
Thomas	1-5	180	95	1-6	[illegible]22	101
Indian Springs	1-5	535	11	1-6	520	12
Eight Mile	1-6	280	66	1-8	586	110
Shepard	1-6	409	29	1-6	409	29
Dodge	1-6	675	65	1-6	675	65
Austin	1-6	396	22	1-6	396	22
Fonde	1-6	679	11	1-6	679	11
Dickson	1-6	835	193	1-6	835	193
Orchard	1-5	754	113	1-5	754	113
Will	1-5	657	175	1-5	657	175
Forest Hill	1-5	560	0	1-5	560	0

	Projected Enrollment Under Zone Lines Offered by the U. S. on 1/27/70			Assignments Under District Court Plan of 1/31/70		
MIDDLE SCHOOLS						
SCHOOL	*GRADES*	*WHITE*	*NEGRO*	*GRADES*	*WHITE*	*NEGRO*
Rain	7-12	1150	97	7-12	1089	112
Eanes/Hall	6-9	1292	977	6-8	978	280
Hall/Eanes	6-9	1292	977	6-8	180	838
Phillips/Washington	6-9	1170	1716	7-8	691	179
Washington/Phillips	6-9	1170	1716	7-9	0	1463
Dunbar	6-9	181	985	7-8	5	738
Central	6-9	468	1206	9-12	0	1233
Mobile Co. Training	6-7	432	859	6-12	57	1125
Prichard	6-7	240	410	6-8	299	201
Trinity Gardens	6-7	380	690	6-8	0	996
Clark	8	536	948	7-9	1080	290
WEST OF I-65						
Azalea Road	7-8	1039	38	7-8	1039	38
Scarbrough	6-8	638	77	6-8	638	77
Hillsdale	6-8	431	217	6-8	431	217

HIGH SCHOOLS SCHOOL ..	*Projected Enrollment Under Zones Lines Offered by the U. S. on 1/27/70* GRADES	WHITE	NEGRO	*Assignments Under District Court Plan of 1/31/70* GRADES	WHITE	NEGRO
Rain	7-12	1150	97	7-12	1089	112
Williamson	10-12	880	471	9-12	472	383
Murphy	10-12	1643	1761	9-12	2340	513
**Toulminville	10-12	9	740	10-12	0	1125
Blount/Carver	9-12	854	1846	9-12	8	1818
Carver/Blount	9-12	854	1546	6-8	1	899
Vigor/Bienville	9-12	1134	1211	9-12	1447	439
Bienville/Vigor	9-12	1134	1211	1-6	288	313
WEST OF I-65						
Davidson	9-12	2302	72	9-12	2296	72
Shaw	9-12	1250	240	9-12	1242	237

* An optional provision of the Department of Justice plan called for closing all Negro Emerson elementary school and assigning its 450 students to six non-contiguous schools: Maryvale, Woodcock, Westlawn, Fonde, Morningside, and Lienkauf. This option is eliminated. As modified by the court, the stu-

Judgment of United States Court of Appeals

FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1969

No. 29332

D. C. DOCKET No. CA 3003-63

BIRDIE MAE DAVIS, *et al*,

Plaintiffs-Appellants-Cross Appellees,

and

UNITED STATES OF AMERICA, *etc.*,

Plaintiff-Intervenor-Appellants-Cross Appellees,

versus

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, *et al*,

Defendants-Appellees-Cross Appellants,

and

TWILA FRAZIER, *et al*,

Intervenors-Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

BEFORE:

BELL, AINSWORTH and GODBOLD,
Circuit Judges.

tary school and assigning its 450 students to six non-contiguous schools: Mary Bryan, Fonde, Morningside, and Lienkauf. This option is eliminated. As modified by the court, the students who would attend Emerson will, instead, attend Council, Caldwell and Lienkauf. Council will have 4 white and 591 Negro students, Caldwell will have 550 Negro students, and Lienkauf will have 273 white and 215 Negro students.

** To be rezoned and integrated (see modification in text).

Judgment of United States Court of Appeals

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Alabama, and was taken under submission by the Court upon the record and briefs on file;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby remanded with direction to the said District Court in accordance with the opinion of this Court.

It is further ordered that defendants-appellees-cross appellants and intervenor-appellees pay the costs on appeal to be taxed by the Clerk of this Court.

June 8, 1970

Issued as Mandate: Jun 8 1970

Orders of Court of Appeals on Rehearing

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 29332

BIRDIE MAE DAVIS, ET AL.,

Plaintiffs-Appelants-Cross Appellees,

UNITED STATES OF AMERICA, ETC.,

Plaintiff-Intervenor-Appellants-Cross Appellees,

versus

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL.,

Defendants-Appellees-Cross Appellants,

and

TWILA FRAZIER, ET AL.,

Intervenors-Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA

BEFORE:

BELL, AINSWORTH, and GODBOLD,

Circuit Judges.

IT IS ORDERED that appellees' motion for leave to file petition for rehearing out of time and leave to file petition for rehearing in excess of 10 pages but not to exceed 20 pages is hereby GRANTED.

Orders of Court of Appeals Denying Rehearing

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 29,332

BIRDIE MAE DAVIS, ET AL.,

Appellants-Cross Appellees,

v.

BOARD OF SCHOOL COMMISSIONERS OF MOBILE COUNTY, ET AL.,

Appellees-Cross Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA

(June 29, 1970)
(On Petition for Rehearing)

BEFORE:

BELL, AINSWORTH, and GODBOLD,

Circuit Judges.

BY THE COURT:—

It is ORDERED that the petition for rehearing filed in the above entitled and numbered cause be, and the same is hereby DENIED.